

## E-filing

P-65  
RECEIVEDCOMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT 42 U.S.C. § 1983R-2 PM 1:02  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIAM6  
NO

1 Name Soltero, Victor D.

2 (Last) (First) (Initial)

3 Prisoner Number CDR K36340

4 HIGH DESERT STATE PRISON DS-210

5 Institutional Address P.O. Box 3030

6 SUSANVILLE, CA 96127

7  
8  
9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 VICTOR DANIEL SOLTERO

(Enter the full name of plaintiff in this action.)

CV 08 1783

12 VS.

Case No. C07-4256 PJH (PR)  
(To be provided by the clerk of court)

13 JOE MC GIRATH; RODERICK Q. HICKMAN;

14 M.S. EVANS; G. PLUNDERS; J. CELAYA; M.

15 ATCHLEY; J. RUELAS; E. GARCIA; R. SALGADO;

16 C. BEVINS, et al. (See II parties B).

(Enter the full name of the defendant(s) in this action.)

17  
18 COMPLAINT UNDER THE  
CIVIL RIGHTS ACT,  
42 U.S.C. § 1983, AMENDED  
COMPLAINT RE: ORDER  
DATED MARCH 10, 2008.

PJH

(PR)

19 [All questions on this complaint form must be answered in order for your action  
to proceed.]

## 20 I. Exhaustion of Administrative Remedies

21 [Note: You must exhaust your administrative remedies before your claim can go  
forward. The court will dismiss any unexhausted claims.]High Desert State Prison DS-210  
P.O. Box 3030  
SUSANVILLE, CA 96127

22 A. Place of present confinement \_\_\_\_\_

23 B. Is there a grievance procedure in this institution?

24 YES( ) NO( )

25 C. Did you present the facts in your complaint for review through the grievance  
procedure?

26 YES( ) NO( )

27 D. If your answer is YES, list the appeal number and the date and result of the appeal at

1 each level of review. If you did not pursue a certain level of appeal, explain why.

2 1. Informal appeal! Pursuant to California Code of Regulations

3 (CCR) 3084.5(a)(3) "... informal level shall be waived..."

4

5 2. Formal level pursuant to CCR 3084.5, appeals  
6 coordinator bypass

7

8 3. Second formal level SVSPC-06-02822 (denied); SVSPD-06-02355; SVSP  
9 (Denied);  
(Denied);  
06-03977; SVSPC-07-02214 (P.GRANTED, RVR REHEARD); unlisted

10 second formal level responses are under VCGCB CLAIM NO.: G566872

11 4. Third formal level IAB CASE NO.: 0611035 (RETALIATIONS IN SECTION H.6.22)

12 (denied); IAB Case No.: 0610663 (denied); relevant info. found in the  
13 decision finding of IAB Case No.: 0510416; unlisted third level responses are  
14 under VCGCB CLAIM NO.: G566872

15 E. Is the last level to which you appealed the highest level of appeal available to you?

16 YES () NO () (CCR RESPONSE NOT EXHAUSTION WITH VCGCB  
(FROM THIRD FORMAL LEVEL).

17 F. If you did not present your claim for review through the grievance procedure, explain  
18 why. Any residuum<sup>from</sup> exhausted claims should not be viewed as 'not  
19 presented'. Or the Plaintiff was in fear of further retaliation, includ-  
ing fear for his life, of further retaliation by CCR.

## 20 II. Parties

21 A. Write your name and your present address. Do the same for additional plaintiffs, if any.

22 Victor Daniel Sottero K36340, HIGH DESERT STATE  
23 PRISON DS-210, P.O. BOX 30357, SUSANVILLE, CA 96127

24

25 B. Write the full name of each defendant, his or her official position, and his or her place of  
26 employment.

27 { See attached additional page(s) labeled

28 "II Parties, Section B. (defendants) continued". }

¶ II Parties, Section B. (defendants) continued. 3

1 (one) Joe Mc Grath, was/is the Secretary of State  
 2 Deputized for the California Department of  
 3 Corrections and Rehabilitation (CDCR) and is the  
 4 signatured upon Administrative Bulletin (AB)  
 5 05/02 (the protocol for the pilot program). The  
 6 known address(es) for the California Secretary(ies)  
 7 is: 1500 11th St., Sacramento, CA 95814 and,  
 8 the known address for CDCR is: P.O. Box 942883,  
 9 Sacramento, CA 94283-0001;

10 (two) Roderick Q. Hickman, was/is the Secretary  
 11 of CDCR. The known address(es) are the same  
 12 as in above-(one);

13 (three) M.S. Evans, was/is the Warden of Salinas  
 14 Valley State Prison (SVSP), the known address  
 15 for SVSP is: P.O. Box 1050, Soledad, CA 93960;

16 (four) G. Ponder, was/is the Facility C Yard  
 17 Captain at SVSP. The known address is the  
 18 same as in above-(three);

19 (five) J. Celaya, was/is the lieutenant of facility C  
 20 yard at SVSP. The known address is the same  
 21 as in above-(three);

22 (six) M. Atchley, was/is the Sergeant of Facility  
 23 C yard at SVSP. The known address is the same  
 24 as in above-(three);

25 (seven) J. Ruelas, was/is an Correctional Officer  
 26 (%) of Facility C at SVSP. The known address  
 27 is the same as in above-(three);

28 (eight) E. Garcia, was/is an Correctional Officer

- (II Parties, Section B, pg 2 (defendants) continued 3
- 1 (8) of Facility C, at SVSP. The known address  
 2 is the same as in above-(three);  
 3 (nine) R. Salgado, was/is 8%, of Facility C, at SVSP.  
 4 The known address is the same as in above-(three);  
 5 (ten) C. Bevins, was/is 8%, of Facility C, at SVSP. The  
 6 known address is the same as in above-(three);  
 7 (eleven) B. Chavez, was/is 8%, of Facility C, at SVSP.  
 8 The known address is the same as in above-(three);  
 9 (twelve) D. Moreno, was/is 8%, of Facility C, at SVSP.  
 10 The known address is the same as in above-(three);  
 11 (thirteen) L. Flowers, was/is 8%, of Facility C, at SVSP.  
 12 The known address is the same as in above-(three);  
 13 (fourteen) P. Lopez, was/is 8%, of Facility C, at SVSP.  
 14 The known address is the same as in above-(three);  
 15 (fifteen) R. Briones, was/is 8%, of Facility C, at SVSP.  
 16 The known address is the same as in above-(three);  
 17 (sixteen) D. Smethers, was/is 8%, of Facility C, at SVSP.  
 18 The known address is the same as in above-(three);  
 19 (seventeen) R. Lapurga, was/is 8%, of Facility C, at SVSP.  
 20 The known address is the same as in above-(three);  
 21 (eighteen) [REDACTED] Jones, was/is an Sergeant at  
 22 Facility C, at SVSP. The known address is  
 23 the same as in above-(three);  
 24 (Nineteen) V. Solis, was/is Correctional Counselor  
 25 II, of Facility C, at SVSP. The known address  
 26 is the same as in above-(three);  
 27 [NOTE: THE NAMES OF ALL THE DEFENDANT(S) RECORDED ON AN VIDEO TAPE ARE  
 28 UNKNOWN TO THE PLAINTIFF AT THIS TIME, AND WILL REQUIRE DISCOVERY DISCLOSURE.]

1 (twenty) J. Stoverson, was/is an Lieutenant,  
2 of Facility 'C', at SVSP. The known address  
3 is the same as in above-(thres);  
4

5 (twentyone) R. Mott, was/is BMU Facilitator,  
6 of Facility 'C', at SVSP. The known address  
7 is the same as in above-(thres);  
8

9 (twentytwo) M. Nilsson, was/is sergeant of  
10 Facility C yard, at SVSP. The known address is  
11 the same as in above-(thres).  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4

5 III. Statement of Claim.

6 State here as briefly as possible the facts of your case. Be sure to describe how each  
7 defendant is involved and to include dates, when possible. Do not give any legal arguments or  
8 cite any cases or statutes. If you have more than one claim, each claim should be set forth in a  
9 separate numbered paragraph.

10  
11

12 (See additional page(s) labeled: 3  
13 { III Statement of Claim Continued }  
14

15  
16  
17

18

19

20

21

22

23 IV. Relief.

24 Your complaint cannot go forward unless you request specific relief. State briefly exactly  
25 what you want the court to do for you. Make no legal arguments; cite no cases or statutes.

26 (See additional page(s) labeled: 3  
27 { III Statement of Claim  
28 { IV Relief Continued }

1 { III Statement of Claim, continued }

1 (ONE) ON OCT. 2, 2006, the defendant (Correctional  
2 officer J. Ruelas), "sucker punched" the Plaintiff  
3 while the Plaintiff was in mechanical restraints,  
4 maliciously and sadistically (which resulted in  
5 bruising and swelling) for the very purpose of  
6 causing the Plaintiff harm, in violation of the Eight  
7 Amendment right secured by the Constitution or  
8 law of the United States, and the deprivation  
9 (to be free from cruel and unusual punishment)  
10 was committed by the said-defendant acting under  
11 the color of state law. The force used by the  
12 said-defendant, was not justified by any  
13 legitimate law enforcement or prison management  
14 need, or was completely out of proportion to  
15 that need.

16  
17 (TWO) The defendant (Correctional Officer E.  
18 Garcia) is an accomplice and cohort to the  
19 physical attack upon the Plaintiff, in violation  
20 of the Eight Amendment of the US Constitution,  
21 for his actions in collaboration with defendant  
22 J. Ruelas on Oct. 2, 2006, by physically  
23 participating in the attack against the  
24 Plaintiff noted at above-(ONE). The depriva-  
25 tion of the Plaintiff's right(s), by the defend-  
26 ant (Correctional Officer E. Garcia), was  
27 committed by the said-defendant acting  
28 under the color of stats law. The force

1 used by the said-defendant, upon the Plaintiff,  
2 was not justified by any legitimate law  
3 enforcement or prison management need, or was  
4 completely out of proportion to that need.;  
5

6 (THREE) the defendant (M. Atchley), is the person  
7 whom commenced the melee, and lead the physical  
8 charge <sup>against</sup> the Plaintiff and other inmate(s), on Oct. 2,  
9 2006. The said-defendant performed an illegal  
10 cell-extraction against known protocol, by  
11 commanding the cell# 225 door to be opened.  
12 Subsequently entering and removing by means  
13 of physical force, inmate(s) L.Vega #49838,  
14 and Guzman # K82787, with the aid of  
15 other defendant(s) (R.Salgado, C.Blevins,  
16 and B.Chavez) using physical force. The  
17 said-defendant(s) were acting to encourage  
18 and incite the melee, and are accomplice to  
19 the action(s) of their co-defendant(s) in (ONE)  
20 , and (TWO). The said-defendant(s) also assisted  
21 in manufacturing documentation to conceal  
22 and compound a crime.

23  
24 (FOUR) The Plaintiff was an individualist, not  
25 positioned amongst inmate(s) Guzman, nor  
26 Vega, nor involved, but was simultaneously  
27 attacked, as noted at above (ONE), and (TWO).  
28 [NOTE: THE PROTOCOL AND PROCEDURE FOR INMATE(S)

WHO 'HOLD' CUFFS, TRAYS, ECT... AND WARRENTS AN EXTRACTION, INCLUDES FIRST CLEARING AND SECURING THE IMMEDIATE AREA, IN THIS INSTANCE THE DAY ROOM FLOOR, AMONGST OTHER KNOWN PRONGS SUCH AS: GEARING UP; CHAIN OF SUPERVISORY APPROVAL; VIDEO MONITORING; EXPLORATION OF OTHER READILY AVAILABLE ALTERNATIVES... ect.] These defendant(s) were not acting in any legitimate law enforcement or prison management need, or was completely out of proportion to that need. This was an melee, that the defendant(s) literally dragged the Plaintiff into.

(FIVE) The defendant (J.Celaya), on Oct 2, 2006, did move through an 'pack of Correctional officers' (located between himself and Vega #V4963X) yelling, "... get out the way, get out the way..." (something to that effect), and performed an Martial Arts type maneuver on inmate Vega from behind, slamming inmate Vega onto the concrete.

(six) The said-defendant (J.Celaya) was not acting in any legitimate law enforcement or prison management need, or was completely out of proportion to that need. Inmate Vega was acting in compliance to the commands of his escorting designate(s) at the time he was attacked by the defendant.

1 (SEVEN) The said defendant (J. Celaya) was an active  
2 participant in the melee. The defendant acted and  
3 moved in incitement and encouragement of the  
4 melee. The defendant is an accomplice to the  
5 actions of his co-defendants of the melee. The  
6 said-defendant also assisted in the manufac-  
7 turing of documentation to conceal and comp-  
8ound a crime.

9

10 (EIGHT) The defendant (D. Moreno), did act in coll-  
11 aboration, and was an participant in the melee  
12 which occurred on Oct. 2, 2006. The said-defon-  
13 dant acted as an accomplice to above-noted  
14 (ONE) thru(SEVEN) in facilitating and assisting  
15 the actions of their co-defendants). The  
16 said-defendant also assisted in the manu-  
17 facturing of documentation to conceal and  
18 compound a crime.

19

20 (NINE) The defendant (L. Flowers), did act in  
21 collaboration, and was an participant in the  
22 melee which occurred on Oct. 2, 2006. The  
23 said-defendant acted as an accomplice to  
24 above-noted (ONE) thru(SEVEN) in facilitating  
25 and assisting the actions of the co-defend-  
26 ants). The said-defendant also assisted in the  
27 manufacturing of documentation to conceal  
28 and compound a crime.

1 (TEN) the defendant (P. Lopez), did act in coll-  
2 aboration, and was an participant in the melee  
3 which occurred on Oct. 2, 2006. The said -  
4 defendant acted as an accomplice to above -  
5 noted (ONE) thru (SEVEN) in facilitating and  
6 assisting the actions of his/her co-defendant(s).  
7 The said-defendant also assisted in the manu-  
8 facturing of documentation to conceal and  
9 compound a crime.

10

11 (ELEVEN) The defendant (R. Briones), did act  
12 in collaboration, and was an participant in  
13 the melees which occurred on Oct 2, 2006.  
14 The said-defendant acted as an accomplice  
15 to above-noted (ONE) thru (SEVEN) in facilitat-  
16 ing and assisting the actions of his/her co-  
17 defendants. The said-defendant also ass-  
18 isted in the manufacturing of documentation  
19 to conceal and compound a crime.

20

21 (TWELVE) The defendant (D. Smethers), did act  
22 in collaboration, and was an participant in  
23 the melee which occurred on Oct. 2, 2006. The  
24 said-defendant acted as an accomplice to  
25 above-noted (ONE) thru (SEVEN) in facilitating  
26 and assisting the actions of his/her co-  
27 defendants. The said-defendant also  
28 assisted in the manufacturing of docum-

entation to conceal and compound a crime.

(THIRTEEN) The defendant (R. Lapurga), did act in collaboration, and was an participant in the melee which occurred on Oct. 2, 2006. The said-defendant acted as an accomplice to above-noted (ONE) thru(SEVEN) in facilitating and assisting the actions of his/her co-defendants). The said-defendant also assisted in the manufacturing of documentation to conceal and compound a crime.

[NOTE: THE EXIBIT FOR(ONE) thru(THIRTEEN) IS EXHIBIT 'B' of 42 USC 1983 COMPLAINT FILED AUG 20, 2007, IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA.

(PERSONAL)  
THE PLAINTIFF WAS NOT ABLE TO MAKE COPIES OF THIS COMPLAINT AND GIVES NOTICE, FROM THE DATE OF THE COURT ORDER MARCH 10, 2008, TO THIS DATE MARCH 26, 2008,<sup>THIS</sup> COMPLAINT FOWARD TO THE COURT, THE LAW LIBRARY HERE IN ADMINISTRATIVE SEGREGATION FOR BUILDING D-5, HAS NOT BEEN OPERATIVE. THIS DENIES THE PLAINTIFF ACCESS TO MAKE COPIES.  
PLEASE TAKE INTO CONSIDERATION, THAT AN PEN FILLER AND BLANK PAPER IS THE ONLY MATERIAL THE PLAINTIFF HAD ACCESS TO FOR PREPARATION AND COMPOSITION OF THIS COMPLAINT.]

26

27

28

1 (FOURTEEN ) The defendant (G.Ponder#) acting in  
2 collaboration, deliberately abused policy and  
3 procedures to retaliate against the Plaintiff  
4 for filing grievance(s), in violation of the first,  
5 fifth, fourteenth, and eighth Amendment  
6 rights) secured by the Constitution or law  
7 of the United States, and the deprivation  
8 of the Plaintiff's rights), was by the said -  
9 defendant acting under the color of state  
10 law. The said-defendant did conspire and  
11 manufacture false documentation for the  
12 purpose of maliciously causing harm upon  
13 the Plaintiff, which include numerous Rules  
14 Violation Reports (RVR 115's), Behavior  
15 Modification Unit(BMU) placement(s)/Adm -  
16 inistrative Segregation(ASU) placement(s)  
17 ('hole'), and vindictive/malicious labeling of  
18 the Plaintiff with stigmatization(s) of known  
19 taboo criterion, in the California prison  
20 system, General Population (namely,  
21 pseudo- "safety concerns/Protection", "org -  
22 onized Criminal Activities...ect.), which  
23 resulted in an attempted murder upon the  
24 Plaintiff.

25

26

27

28

(fifteen ) On October 2, 2006, then and there,  
right-after the physical altercation descri-  
bed at (one), the Plaintiff was taken directly  
to the program Office area, and taken before  
the committee (in the program office area), where  
the defendant (G. Ponder) was the chairman  
of the committee. Simply put, the Plaintiff  
was ruffed up by the staff and taken before  
the committee, under subsidiary terms.

(See Exhibit Amend C.)

(sixteen ) In the presence of the commi -  
ttee, at the Oct 2, 2006 hearing noted-above,  
the Plaintiff found himself distraught and in  
dismay by the events of the staff and com-  
mittee's actions, and requested that the  
hearing be held in absentia. (See Exhibit Amend C.).  
The plaintiff was returned to his cell.

(seventeen ) At some point in time, sub -  
sequent to the physical altercation  
noted at (one), an Medical Tech. reported  
the staff misconduct. The defendant  
(Sergeant M. Atchley) at sometime during  
the night of October 2, 2006, was accom-  
panied by approximately 15 uniformed  
employees of CDCR, removed the  
Plaintiff from his assigned living quartor,  
to the program area. In an threatening manner.

1 (eighteen ) In route from the Plaintiff's assigned  
2 living quarter, to the program office area, an  
3 uniformed employee held an video camera and  
4 recorded the following events:

5

6(a) The Medical Tech. (name unknown to the  
7 plaintiff) is recorded on the video tape exa-  
8 mining the swelling and bruising on the back  
9 of the Plaintiff's head, where he was "sucker  
10 punched". And is recorded filling out Medical  
11 reports, which are missing;

12

13(b) The defendants (Sergeant Atchley and  
14 Sergeant Jones), and the mob of uniformed  
15 employees (names unknown), are recorded  
16 visually and audibly attempting to conceal  
17 and compound the events of 'staff misconduct'  
18 by threatening and intimidating the Plaintiff,  
19 to aquire a statement in coercion. Having  
20 the Plaintiff denounce the Medical Tech's  
21 reporting of the Oct. 2, 2006 staff "misconduct";  
22

23

24(c) The said-video recording, recorded  
25 exactly what was said, and by whom;

26(d) This was not the known procedure. (or 48b.)

27 [NOTE: THE THREATS, AND CONTENT OF THE THREAT(S), WERE  
28 LATER CARRIED OUT AMONGST THE RETALIATIONS AND

1 REPRISALS AGAINST THE PLAINTIFF].

2  
 3 (nineteen ) the defendant (G.Pondon~~o~~) was/is  
 4 the Captain of SVSP, C Facility, on Oct. 2, 2006.  
 5 Under his command, the Plaintiff was held in  
 6 his assigned cell 228, building C8, at SVSP,  
 7 for two weeks after the physical altercations  
 8 noted at (ONE). This is known as "being 'sat on'",  
 9 an control factor to conceal and compound. It  
 10 is not the known procedure.

11  
 12 (twenty ) The Plaintiff, on October 16, 2006,  
 13 was placed in administrative segregation by  
 14 the defendant (J.Celava), with pseudo-safety  
 15 concerns. And the 'decision' for the place-  
 16 ment under the fictitious and stigmatic  
 17 'reason for placement', was made by the  
 18 defendant (G.Pondon~~o~~). (see Exhibit Amend 'E'.)

19  
 20 (twenty one) On Oct 26, 2006, the Plaintiff  
 21 appeared before the SVSP's, ASU Institutional  
 22 Classification Committee (ICC), for ASU  
 23 placement review. The Plaintiff emphatically  
 24 denied having any 'safety' concerns. (see Exhibit  
 25 Amend.'A').

26  
 27 (twenty two ) The Investigative Security  
 28 Unit (ISU), investigated, and completed

1 the investigation on 12-5-06, into the 'reason  
 2 for placement' of the Plaintiff in ASU (noted-  
 3 above) and the reason for placement was  
 4 found to be untrue. (See Exhibit Amend 'B').  
 5

6 (twenty three) On Dec. 12, 2006, the Plaintiff  
 7 was returned to Facility 'C', SVSP, by ICC.  
 8

9 The Plaintiff was placed officially back  
 10 into the BMU on Dec. 13, 2006, by SVSP,  
 11 Facility 'C', Unit Classification Committee  
 12 (UCC). The defendant( ).Clava) was the  
 13 chairman. (See Exhibit Amend 'B').  
 14

15 (twenty four ) The Plaintiff remained in the  
 16 BMU until March 26, 2007, when the  
 17 defendants (G. Pandors, V.Solis, J. Stevan-  
 18 son, et al.) acting in collaboration, abused  
 19 policy and procedures, in retaliation, when  
 20 they placed and held the Plaintiff in  
 21 ASU until the Plaintiff was transferred  
 22 to High Desert State Prison in Sept. of  
 23 2007. (See Exhibit Amend 'D' and Amend 'F'.)  
 24

25 (twenty five ) The pretext for the Plaintiff's  
 26 March 26, 2007, ASU Placement by the  
 27 above-named defendants was "... refusal  
 28 to participate in the interview process..."  
 (See Exhibit Amend 'D'.) "... and posed

1 a threat." [NOTE: FACTUALLY, THERE WAS NO THREAT, NOR WAS  
 2 ANY THREAT EVER NAMED, WHICH THE PLAINTIFF ACTUALLY  
 3 FPOSED. NOTE?: KEEP IN MIND, THE PLAINTIFF WAS PLACED  
 4 IN ASU FOR NOT INTERVIEWING.].

5 (twenty six ) The said- defendants (noted above)  
 6 'mercurialness', as to the reason for the Plaintiff's  
 7 ASU placement, is revealed on the 128G, of Aug.  
 8 9, 2007, which states in part, "... during his  
 9 placement in BMU he disrupted the program  
 10 by shouting out of his cell for others not to  
 11 participate in the program. Since his removal  
 12 from the GP the program has been running  
 13 ...., has an strong influence over the southern  
 14 hispanic population." [THIS IS MISINFORMATION AND  
 15 MENDACITY.]  
 16

17 (a) The reference(s) in the above-noted 128G  
 18 of 8-9-2007, are an interpolation of an 128B  
 19 dated 5-01-2007. (See Exhibit Amend. 'D');

20  
 21 (b) The above-noted 128B of 5-01-2007, is an int-  
 22 erpolation of an 3-23-2007, RVR 115#C07-03-0024,  
 23 Authored by Motts. (See Exhibit Amend. 'G');

24  
 25 (c) The Plaintiff was found 'not Guilty' of the  
 26 above-noted RVR 115@ (b), the factors were  
 27 proven to be untrue, upon adjudication.

28 (see Exhibit Amend. 'G').

1 (d) Both Inmates, Hart # H88709 and, Sneade  
 2 # J37911, are not Southern Hispanic Inmates,  
 3 in fact they are black folk (see Exhibit Amend.  
 4 'G.);  
 5

6 (e) The defendants ( G.Tondors, V.Solis, et al.)  
 7 moved ahead with this false documentation,  
 8 knowing it was not true, and fully aware of  
 9 the above-noted factor(s) (a) thru(d). (See  
 10 the 8-9-2007, 128G, previously forward  
 11 forward in 'expedito motion!');  
 12

13 (f) Recorded on the 8-9-2007, 128G, is the  
 14 signatures of the defendants, in acknowle -  
 15 dgment of the RVR(S) disposition;... dismiss -  
 16 ed in the interest of justice";  
 17

18 (g) At Exhibit Ancud F, is the 128 G of 7-5-2007,  
 19 noting "...extension to complete disciplinary  
 20 process...", and in the 'DISCIPLINARY HISTORY'  
 21 section, the identification of the pending  
 22 disciplinary, "failure to meet program expectations  
 23 (PENDING), willfully resisting a Peace Officer";  
 24

25 (h) From Dec 13, 2006, to March 26, 2007, (see  
 26 twentythree) and, (twentyfour ), when Plaintiff was in  
 27 the BMU. The BMU was up and running.  
 28 Interestingly enough, the Plaintiff has found

1 that in the Administrative Bulletin AB 05/02  
2 (the protocol for the pilot program.BMU.), it  
3 states that records of the BMU are forward to  
4 the Director of High Security CDCR.  
5

6 (twenty seven ) The Plaintiff based his decision  
7 not to interview ('Prison snitch') on an CDCR,  
8 Sacramento Inmate Appeal Branch (IAB)  
9 response, IAB Case No.: 05-09161, which  
10 states in part, "...there is no regulation which  
11 allows staff to discipline an inmate for  
12 refusing to interview or for not signing an  
13 promise to behave chrono..". Correspondance  
14 Copies were forward to the Warden and  
15 SVSP appeals coordinator.  
16

17 (twenty eight ) The basic gist of the phrase,  
18 "Recurring Failure to meet Program  
19 Expectations" (i.e. not signing) amounts to;  
20 (1.) Prison snitch or (2.); conceding to  
21 'Organized Criminal Gang activity'. The  
22 Plaintiff simply did not want to be villain-  
23 ized, nor stigmatized.  
24

25 (twenty nine ) The RVR 115 # C07-01-0014,  
26 for, "recurring failure to meet program expect-  
27 ations", authored by the defendant (R.Mott)  
28 on 1-11-2007, was subsequent to the

1 IAB Case No.:05 09161 response, and an  
 2 abuse of policy and procedure to retaliate  
 3 against the Plaintiff. (see Exhibit Amend.'H-1').  
 4

5 ( THIRTY ) the RVR 115 # C06-10-0017, for  
 6 "recurring failure to meet program expectations",  
 7 authored by the defendant (V.Solis) on 10-2-2006,  
 8 was subsequent to the IAB Case No.:05 09161  
 9 response, and an abuse of policy and procedures  
 10 to retaliate against the Plaintiff. (see Exhibit Amend.'H-2')  
 11

12 ( THIRTY ONE ) the RVR 115 # C06-12-0047, for  
 13 "recurring failure to meet program expectations",  
 14 authored by ~~BB~~ the defendant (B.Chavez) on  
 15 12-26-2006, was subsequent to the IAB Case  
 16 No.:05 09161, response, and an abuse of  
 17 policy and procedure to retaliate against  
 18 the plaintiff. [NOTE: DEFENDANT (B. CHAVEZ) CLAIMED  
 19 HE NEVER AUTHORED THE RVR, AND IT WAS UNKNOWNST.]  
 20 (see Exhibit Amend.'H-3')

21 ( THIRTY TWO ) the 128 B chrono, for "recurring  
 22 failure to meet program expectations", authored  
 23 by the defendant (G.Pandor) on 8-23-06;  
 24 was subsequent to the IAB Case No.:05 09-  
 25 161 response, and an abuse of policy and  
 26 procedure to retaliate against the Plaintiff.  
 27 (see Exhibit Amend.'H-4')

28 ( THIRTY THREE ) the 128 A chrono, for recurring

1 failure to meet program expectations", auth-  
2 ored by the defendant (M. Nilsson) on 12-28-  
3 2006, was subsequent to the IAB Case No.:  
4 05-09161 response, and an abuse of policy  
5 and procedure to retaliate against the  
6 Plaintiff. (see Exhibit Amend.'H-5').

7

8 ( ) .

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 (THIRTY FOUR ) Please take notice that prior to the  
2 noted deprivations, the defendant (G.Ponder)  
3 effectively used an 'attack' ("attempted murd-  
4 er of Correctional Officers"), as an guise to  
5 mask and proffer an alterior adjenda, as well  
6 as justify abuse.

7

8 (THIRTYFIVE ) The use of an reinforcement strategy  
9 by the defendant (G.Ponder) is no psycholog-  
10 ical marvel. Never the less, it is quite effict-  
11 ive. Sow an advantage... reap an habit. Using  
12 misinformation and mendacity, the said-defe-  
13 manufactured memorandums dated November  
14 14, 2005, and December 29, 2005. These memo-  
15 randums were distributed amongst the  
16 staff, for the purpose of reinforcing pre-  
17 judice and animosity in contra of the  
18 Plaintiff. The memorandums interpolate the  
19 July 14, 2005, 'attack' noted above, the  
20 Plaintiff named), and a determination of  
21 a threat the Plaintiff posseed.

22

23 (THIRTYSIX ) Sorting through the many prongs  
24 of the defendant(s) efforts to compound and  
25 conceal, the Plaintiff has found it simpler to  
26 articulate the discernment of facts by  
27 application of 'The Principals) of entail-  
28 ment'. where we can now discern the

1 the defendants actions of deprivation, are  
2 contrary to the principals of Entailment.  
3

4 (THIRTYSEVEN) Factually, the Plaintiff had  
5 absolutely nothing to do with the 'attack'  
6 noted-above, nor any knowledge of the  
7 occurrence, other then that provided on  
8 the said-memorandums. The plaintiff was  
9 not in or around that location, and there is  
10 no basis, offer of proof, substantion, nor  
11 evidence in connection with the Plaintiff.  
12

13 (THIRTY EIGHT ) Nor, was/is there any grounds  
14 for questioning or interviewing the Plaintiff  
15 in connection to the said-matter. Curiously  
16 enough, the defendant (G.Pondorf) was well  
17 aware of these facts.  
18

19 (THIRTYNINE ) The said-defendant was  
20 attempting to involve the Plaintiff in  
21 "snitching", against the Plaintiff's will, by use  
22 of an smear campaign and submission tactics.  
23

24 The Plaintiff has no obligation to act as an  
25 Agent, Informant, nor Operative, to coll-  
26 ect and gather information for the state.  
27

28 (\_\_\_\_\_) Hast

1 (FORTY ) subsequent to the above-noted  
2 11-14-05, and 12-29-2005, memorandums, and  
3 the IAB Case No.: 05 09161 response, the  
4 defendant(G. Randa) retaliated against the  
5 Plaintiff, by placing the Plaintiff in the BMU.  
6 The defendant(s) combed the Plaintiff's central  
7 file(C-file) and retroactively used an '2002  
8 riot', as the pretext for the BMU placement  
9 of the Plaintiff.

10

11 (FORTY ONE ) Under the above-said dub-  
12 ious and highly suspect conditions, the  
13 Plaintiff sought the known safeguard  
14 protection under the law. The Plaintiff  
15 contacted and forward an copy of the SVSP  
16 BMU 'Orientation Booklet, General Rules and  
17 Procedure', to the Office of Administrative  
18 Law (OAL), in re: California Penal Code  
19 (d)(1)(C), and Government Code 11340.

20

21 ( FORTY two ) The OAL return correspondance  
22 revealed the "conditions' for an authorized  
23 pilot program had not been met. (See Exhibit  
24 Amend. ). The OAL correspondance states,  
25 "... The Office Of Administrative Law  
26 cannot identify any regulations on point...".  
27 (See Exhibit Amend. ). The BMU at SVSP was  
28 operating pursuant to 'Underground' regulations.

1 (See Exhibits) Amend. 'K-1', Amend. 'K-2', and Amend.  
2 K-3').  
3

4 (FORTY THREE) The defendant (Rodgerick Q.  
5 Hickman), is/was the custodial gaurdian of the  
6 Plaintiff, and is responsible for the welfare  
7 of the Plaintiff, as well as the operation(s) of  
8 the California Department of Corrections  
9 and Rehabilitation (CDCR), and its staff and  
10 employees.

11  
12 (FORTY FOUR) The defendant (Joe McGrath), is/  
13 was also an higher-level custodial gaurdian  
14 of the plaintiff, and is responsible for the  
15 welfare of the Plaintiff, as well as the oper-  
16 ation(s) of CDCR, its staff and employees.

17 Said-defendant is also the signatory (signor)  
18 of the Administrative Bulletin (AB) 05/02.  
19 (the protocol for the pilot program, Behavior  
20 Modification Unit (BMU)).  
21

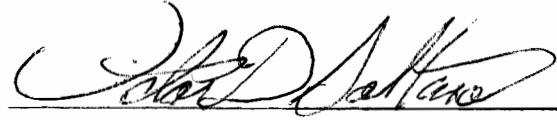
22 (FORTY FIVE ) the defendant (MS. Evans), is  
23 also an higher-level custodial gaurdian of  
24 the Plaintiff, and responsible for the welfare  
25 of the Plaintiff, as well as the operation(s)  
26 of Salinas Valley State Prison (SVSP), its  
27 staff and employees. The said-defendant is  
28 also the signatory (signor) of the

1 SVSP-BMU 'Orientation Booklet, General  
2 rules and Procedures'. Also an signature  
3 (signor) of memorandum Dec. 29, 2005. (see  
4 Exhibit Amend. I ).  
5

6 { IV  
7 See memorandum of points and  
8 authorities in support of ~~complaint~~ letter }  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
283

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 26 day of March, 2008



(Plaintiff's signature)

1 (1) THE ASSISTANCE OF THE ATTORNEY GENERAL'S  
2 OFFICE, AND ATTORNEY GENERAL, IN COMPLIANCE  
3 ~~WITH 42 USC 1997~~ TO REMEDY THE 'MINIMUM  
4 STANDARD OF HUMAN DECENTY' ISSUE(S), AND THE  
5 CONSTITUTIONALLY GUARANTEED MINIMA' DEP-  
6 RIVATIONS) IN THE CALIFORNIA DEPARTMENT  
7 OF CORRECTIONS AND REHABILITATION (CDCR);  
8

9 (2) THE SAFEGUARD PROTECTION BY THE OFFICE  
10 OF ADMINISTRATIVE LAW, TO REDRESS THE  
11 REGULATION INADEQUACIES OF CDCR'S  
12 "Underground" REGULATIONS;  
13

14 (3) THE CALIFORNIA DEPARTMENT OF CORRE-  
15 TIONS AND REHABILITATION (DCR), OR IF  
16 NECESSARY AN APPOINTEE 'MASTERS' TO  
17 REMOVE THE STIGMATIC AND RETALIATORY  
18 MATERIAL FROM THE PLAINTIFF'S FILE;  
19

20 (4) JUST COMPENSATION AND MONETARY DAMAG-  
21 ES TO BE PAID BY THE DEFENDANT(S) IN THEIR  
22 PERSONAL AND/OR PROFESSIONAL CAPACITY,  
23 INDEPENDANTLY OR AS AN WHOLE (WHICHEVER  
24 IS DEEMED APPROPRIATE FOR EACH INSTANCE),  
25 FOR THE FOLLOWING AMOUNT AND REASUN  
26 SET FORTH:  
27

28 (a) FOR THE ABUSE(S) OF POLICY AND PROCEDURE(S)

1 IN RETALIATION AGAINST THE PLAINTIFF, WHERE  
2 THE DEFENDANT(S) VINDICTIVELY AND MALICIOUSLY  
3 STIGMATIZED THE PLAINTIFF WITH KNOWN TABOO  
4 CRITERION, FOR THE DELIBERATE PURPOSE OF  
5 CAUSING THE PLAINTIFF HARM. AND THEN, DID  
6 RESULT IN AN ATTEMPTED MURDER (MULTIPLE  
7 STABS AND GASHING INJURIES) UPON THE  
8 PLAINTIFF, THE AMOUNT OF, \$5,000,000<sup>00</sup>; ;  
9

10 (b) FOR THE DEFENDANT(S) PHYSICAL ABUSE OF  
11 THE PLAINTIFF, BY 'SUCKER PUNCHING', AND  
12 RUFFING UP THE PLAINTIFF, CAUSING BRUISING,  
13 AND SWELLING TO THE BACK OF THE PLAINTIFF'S  
14 HEAD. THE AMOUNT OF, \$1,000,000<sup>00</sup>. ;  
15

16 (c) FOR EACH DAY THE PLAINTIFF SUFFERED IN THE  
17 SVSP-BMU, RESULTING FROM THE ABUSE OF  
18 IN RETALIATION  
19 POLICY AND PROCEDURE(S), AND/OR PURSUANT  
20 TO 'Underground' REGULATIONS, THE AMOUNT  
21 OF \$100<sup>00</sup> FOR EACH DAY, FROM EACH DEFEND-  
22 ANT APPLICABLE; ;  
23

24 (d) FOR EACH DAY THE PLAINTIFF SUFFERED IN  
25 THE SVSP-ASU, RESULTING FROM THE ABUSE  
26 OF POLICY AND PROCEDURE(S) BY THE DEFEN-  
27 DANT(S) IN RETALIATION. THE AMOUNT OF,  
28 \$100<sup>00</sup> FOR EACH DAY, FROM EACH DEFENDANT.

1 (5) FOR CCR TO ISSUE MANUAL(S) AND PROVIDE  
2 TRAINING TO IT'S EMPLOYEE(S) IN REGARD TO  
3 THE FOLLOWING:

4 (a) PROHIBITION OF RETALIATION;  
5 (b) THE PROCEDURES FOR PROMULGATION AND  
6 PROCEDURAL REQUIREMENTS FOR ENVISIONED  
7 REGULATION(S) AND ORDINANCE;  
8 (c) IDENTIFY(ING) AND MAKING KNOWN THE  
9 'MINIMUM STANDARD OF HUMAN DECENCY', AND  
10 'CONSTITUTIONALLY GUARANTEED MINIMA'.  
11

12 (6) Attorney fees) to be paid to Plaintiff, in  
13 the amount of \$ 25,000<sup>00</sup> from each defendant.  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IV. MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF COMPLAINT.

## **KNOW YOUR RIGHTS ASSAULT AND EXCESSIVE FORCE**

ACLU NATIONAL PRISON PROJECT

*Much of the following information was taken from a book by John Boston & Daniel Manville called the Prisoners' Self-Help Litigation Manual (3d ed. 1995).*

**Important Note:** The law is always evolving. If you have access to a prison law library, it is a good idea to confirm that the cases and statutes cited below are still good law. The date at the bottom of this page indicates when this information sheet was last updated.

### **Protection from Assault**

Prison officials have a legal duty to refrain from using excessive force and to protect prisoners from assault by other prisoners. "Being violently assaulted in prison is simply not part of the penalty that criminal offenders pay for their offenses against society." See Farmer v. Brennan, 511 U.S. 825, 833 (1994). However, prison officials are not automatically responsible for all assaults on prisoners, and a prison official's use of force does not automatically violate the Constitution. Courts apply different rules to decide whether the Eighth Amendment has been violated after an assault by a prisoner or a use of force by prison staff.

### **Assault by Another Prisoner**

Prison officials may be held liable under the Eighth Amendment only if they act with "deliberate indifference" or "reckless disregard" for a prisoner's safety. See id. at 836-37. In other words, prison officials may be liable if they knew that a prisoner was at substantial risk of serious harm, but ignored that risk and failed to take reasonable steps to protect the prisoner. See id. at 847. Generally, courts have distinguished between a substantial risk of serious harm (or strong likelihood of injury) and the everyday risk of harm that comes from being in prison (or mere possibility of injury). See, e.g., Brown v. Hughes, 894 F.2d 1533, 1537 (11<sup>th</sup> Cir. 1990). In addition, even when a prisoner is harmed, if prison officials responded reasonably to the risk, they are not held liable. Farmer, 511 U.S. at 844-45. Courts often dismiss isolated failures to protect as "mere negligence," even when prison officials had prior information about a threat to a prisoner, but failed to act on that information. See Davidson v. Cannon, 474 U.S. 344, 347-48 (1986).

There are two ways to show deliberate indifference in a prisoner assault case. One is to show that prison officials' failed to respond or act reasonably in light of a particular threat of danger to an individual prisoner. See, e.g., Odom v. South Carolina Dep't of Corr., 349 F.3d 765, 772 (4<sup>th</sup> Cir. 2003) (plaintiff warned officer that other prisoners would try to kill him); Scicluna v. Wells, 345 F.3d 441, 445 (6<sup>th</sup> Cir. 2003) (plaintiff testified he had told unit manager of risk of assault by his

co-defendant); Cottone v. Jenne, 326 F.3d 1352 (11<sup>th</sup> Cir. 2003) (failure to monitor prisoner known to be violent is deliberate indifference); Peate v. McCann, 294 F.3d 879 (7<sup>th</sup> Cir. 2002) (plaintiff attacked twice by the same prisoner); Cantu v. Jones, 293 F.3d 839 (5<sup>th</sup> Cir. 2002) (guards allowed prisoner out of his cell to attack another prisoner); Horton v. Cockrell, 70 F.3d 397 (5<sup>th</sup> Cir. 1995) (staff failed to protect prisoner from attack despite his grievances requesting protection); Swofford v. Mandrell, 969 F.2d 547, 549 (7<sup>th</sup> Cir. 1992) (guards put sex offender in unsupervised holding cell). The other is to show prison conditions or practices that create a dangerous situation for prisoners in general. See, e.g., Butler v. Dowd, 979 F.2d 661, 675 (8<sup>th</sup> Cir. 1992) (en banc) (random housing assignments of vulnerable prisoners and obstacles to admission to protective housing); Skinner v. Uphoff, 234 F.Supp. 2d 1208 (D. Wyo. 2002) (de facto policy of failing to investigate assaults). Sometimes both theories apply to the same fact situation.

In addition to showing deliberate indifference, a prisoner must show that the actions or practices of prison officials actually caused the assault. There must be a connection between what prison officials did or failed to do and the harm that occurred. See Best v. Essex County, 986 F.2d 54, 56-57 (3<sup>rd</sup> Cir. 1993). Thus, courts have imposed liability on line correctional officers who observed an assault or knew of a risk to a prisoner, but did nothing, see, e.g., Ayala Serrano v. Lebron Gonzales, 909 F.2d 8, 14 (1<sup>st</sup> Cir. 1990); on higher-level supervisors who made or failed to make policies, or failed to act on risks they knew about, see, e.g. Redman v. County of San Diego, 942 F.2d 1435, 1447-48 (9<sup>th</sup> Cir. 1991); and on city or county government when a prisoner's assault resulted from a governmental policy, see, e.g., Berry v. City of Muskogee, 900 F.2d 1489, 1497-99 (10<sup>th</sup> Cir. 1990). Courts require prisoners to show how individual named defendants are responsible for causing the assault. Morales v. New York State Dep't of Corr., 842 F.2d 27, 29-30 (2<sup>nd</sup> Cir. 1988) (explaining how several defendants were liable in the same incident).

### **Use of Force by Prison Staff**

With respect to convicted prisoners, prison staff violate the Eighth Amendment when they use force "maliciously and sadistically for the very purpose of causing harm," but they are permitted to use force "in a good faith effort to maintain or restore discipline." Hudson v. McMillian, 503 U.S. 1, 6 (1992) (quoting Whitley v. Albers, 475 U.S. 312, 320-21 (1986)). Courts apply different legal standards to arrestees, pre-trial detainees, and convicted prisoners; however, an inmate generally must show that the force used was not justified by any legitimate law enforcement or prison management need, or was completely out of proportion to that need. See Graham v. Connor, 490 U.S. 386, 397 (1989) (arrestees); Hudson, 503 U.S. at 5-6 (convicted prisoners).

The amount of force that courts consider excessive depends on the specific fact situation. As a general rule, however, the force used by prison staff must be more than *de minimis* (very small or insignificant) to violate the Eighth

Amendment. See Hudson, 503 U.S. at 9-10. Courts disagree on what constitutes a *de minimis* use of force. Compare Hudson, 503 U.S. at 10 (kicks and punches resulting in bruises, swelling, loosened teeth and a cracked dental plate are not *de minimis*) and Riley v. Dorton, 115 F.3d 1159, 1168 (4<sup>th</sup> Cir. 1997) (sticking pen a quarter of an inch into a detainee's nose, threatening to rip it open and using medium force to slap his face is *de minimis*). If there is a legitimate need to use force and no intent to cause unnecessary harm, prison staff can use serious and even deadly force without violating the Constitution. See, e.g., Whitley v. Albers, 475 U.S. 312, 322-26 (1986) (use of shotgun in riot/hostage situation). However, when no such legitimate need exists, courts will be more likely to find an Eighth Amendment violation. See, e.g. Treats v. Morgan, 308 F.3d 868, 872 (8<sup>th</sup> Cir. 2002) (use of pepper spray on a prisoner who "had not jeopardized any person's safety or threatened prison security" provided valid basis for Eighth Amendment claim).

However, prisoners do not need to show a serious or permanent injury to establish an Eighth Amendment violation. The extent of the injury is simply one factor to consider in deciding whether staff acted maliciously and sadistically or in good faith. See Hudson, 503 U.S. at 7-9. Establishing malice does not require direct proof of what was in an officer's mind. Prison staff's actions alone, in light of the circumstances, may be sufficient to show malice. See Thomas v. Stalter, 20 F.3d 298, 302 (7<sup>th</sup> Cir. 1994). Moreover, sexual abuse or rape of a prisoner by staff is, by definition, a "malicious and sadistic" use of force. Smith v. Cochran, 339 F.3d 1205, 1212-13 (10<sup>th</sup> Cir. 2003).

## **KNOW YOUR RIGHTS DISCIPLINARY SANCTIONS AND PUNISHMENT**

ACLU National Prison Project

**Important Note:** The law is always evolving. If you have access to a prison law library, it is a good idea to confirm that the cases and statutes cited below are still good law. The date at the bottom of this page indicates when this information sheet was last updated.

### **Examples of disciplinary punishment**

Examples of disciplinary punishment include: physical punishment, punitive segregation, losing visitation privileges, restricting visitation privileges, monetary restitution, water deprivation, reducing shower privileges and extending sentences. You may not have received a disciplinary hearing before receiving this type of punishment or, if you did, it may not have been a fair hearing. Unfortunately we do not have the resources to assist the many prisoners who have written us about these sorts of problems. We can, however, provide the following information.

### **Challenging the Nature of the Punishment You Received**

Courts give deference to prison officials' decisions about disciplinary punishment. Punishments that fulfill legitimate penological interests (e.g., rehabilitation and crime prevention) are generally upheld. The Supreme Court has provided four factors to decide whether prison regulations violate the Constitution.<sup>1</sup> These factors are: (1) whether the regulation has a "valid, rational connection" to a legitimate governmental interest; (2) whether alternative means are open to inmates to exercise the asserted right; (3) what impact an accommodation of the right would have on guards and inmates and prison resources; and (4) whether there are "ready alternatives" to the regulation.<sup>2</sup>

For example, the Supreme Court has held that a prison administration's decision to restrict visitation for prisoners with two substance abuse violations served the legitimate goal of deterring drug and alcohol use within prison.<sup>3</sup> The Court found that the punishment fulfilled the four evaluation factors listed above although the ban on visits from people other than clergy and attorneys on official business lasted a minimum of two years.<sup>4</sup>

Monetary restitution for property damage or other offenses that cost the prison money is

---

<sup>1</sup> See Turner v. Safley, 482 U.S. 78, 89-91 (1987).

<sup>2</sup> Id.

<sup>3</sup> Overton v. Bazzetta, 539 U.S. 126 (2003).

<sup>4</sup> Id.

a permissible form of punishment.<sup>5</sup> Because many prisons have various "tiers" or "levels" of discipline, with different punishments for each, prisoners who commit the same violation may receive different punishments. However, disparities in punishment do not necessarily violate constitutional rights unless the challenged punishment can be proven to be arbitrary.<sup>6</sup>

Although courts would find most punishments with legitimate penological interests constitutional, they have found punishments that involve physical abuse or degrading conditions of punitive confinement unconstitutional.<sup>7</sup> Although courts are reluctant to interfere with the administration of prisons, they probably will dislike punishments that are disproportionate, or that offend idealistic concepts of dignity, civilized standards, humanity and decency.<sup>8</sup> However, courts rarely find prison punishments disproportionate.<sup>9</sup>

### **Challenging the Disciplinary Sanction Itself**

Prisoners may challenge disciplinary sanctions imposed on them under the Due Process Clause of the Fourteenth Amendment.<sup>10</sup> The Supreme Court has said that inmates are not entitled to hearings (or other due process procedures) for disciplinary punishments unless (1) there is a state-created liberty interest in freedom from such punishment, and (2) the punishment imposes atypical and significant hardship.<sup>11</sup> The Supreme Court has not fully defined "atypical and significant hardship." Most circuits have found that administrative segregation without more does not rise to the level of an atypical and significant hardship.<sup>12</sup> However, in Wilkinson v. Austin, the Supreme Court concluded that being sent to a supermax facility with limited human contact for an indefinite sentence and with no opportunity for parole does satisfy the "atypical and

---

<sup>5</sup> Longmire v. Guste, 921 F.2d 620, 623-24 (5<sup>th</sup> Cir. 1991).

<sup>6</sup> Phillips v. Gathright, 603 F.2d 219 (4<sup>th</sup> Cir. 1979).

<sup>7</sup> Jackson v. Bishop, 404 F.2d 571, 579 (8<sup>th</sup> Cir. 1968) (Eighth Circuit enjoined the use of the strap until proper regulations and safeguards against abuse were implemented).

<sup>8</sup> Id.

<sup>9</sup> See, e.g., Savage v. Snow, 575 F.Supp. 828, 836 (S.D.N.Y. 1983) (upholding 90 days loss of good time and confinement in segregation for abuse of correspondence).

<sup>10</sup> Prisoners may also base their challenges on state law grounds, citing state prison regulations or statutes. State prisoners seeking to invalidate an unlawful criminal conviction or sentence must generally first exhaust their state court remedies, then seek federal court relief through a writ of habeas corpus. Only if the conviction or sentence is overturned may the prisoner-plaintiff then pursue a damages action for an unlawful conviction or sentence under 42 U.S.C. § 1983. See Heck v. Humphrey, 512 U.S. 477, 486, 114 S.Ct. 2364, 2372 (1994).

<sup>11</sup> Sandin v. Conner, 515 U.S. 472 (1995).

<sup>12</sup> See Beverati v. Smith, 120 F.3d 500 (4<sup>th</sup> Cir. 1997); Mackey v. Dyke, 111 F.3d 460 (6<sup>th</sup> Cir. 1997); Pichardo v. Kinker, 73 F.3d 612 (5<sup>th</sup> Cir. 1996); Luken v. Scott, 71 F.3d 192 (5<sup>th</sup> Cir. 1995).

"significant hardship" test.<sup>13</sup>

Once a prisoner asserts that the discipline imposed is significant and atypical, he or she must still establish that the procedures in place were inadequate. To make this determination, a court must consider three factors: (1) the private interest involved; (2) the risk of an erroneous deprivation of such interest and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the burdens that different or additional procedural requirements would entail.<sup>14</sup> For example, although the Supreme Court concluded in Wilkinson v. Austin that being sent to a supermax facility *could* violate the Due Process clause, it ultimately concluded that the procedural safeguards were sufficient, and that there was no constitutional violation. In reaching this decision, the Court put much emphasis on the fact that the prisoner was given notice and an opportunity to be heard, and was provided with many opportunities to challenge an erroneous Supermax placement.<sup>15</sup>

The Supreme Court has held that prisoners cannot sue for monetary damages under 42 U.S.C. § 1983 for loss of good time until they get their disciplinary conviction set aside through the prison appeal system or in state court.<sup>16</sup> PLFA

---

<sup>13</sup> 125 S.Ct. 2384, 2394-95 (2005).

<sup>14</sup> Id.

<sup>15</sup> Id. at 2395-98.

<sup>16</sup> Edwards v. Balisok, 520 U.S. 641 (1997).

**COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT, 42 U.S.C § 1983**

**FILED**

01 AUG 20 AM 11:23

3 Name Soltero, Victor

~~SIXTH D. C. W. WIEKING  
CLERK, U. S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA~~

4 | (Last) (First)

(First)

Initial

5 | Prisoner Number CDCR # K36340

6 Institutional Address Salinas Valley State Prison D9-173  
7 PO Box 1050, Soledad, CA 93960

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Victor Daniel Soltero

1 (Enter the full name of plaintiff in this action.)

VS

C 307

4256

Case No.

(To be provided by the clerk of court)

3 JOE MC GRATH; M.S. EVENS; G.  
4 PONDERS & CO / RUELAS AND SOME  
5 OR ANY PERSON(S) NAMED THEREIN SUPPORTING  
DOCUMENTS (SEE VCG/CB CORRESPONDANCE  
INCLUDED AS EXHIBIT "A") WHEN FUTURE  
APPOINTED COUNSEL PER 42 USC 1988,  
ET AL.

**COMPLAINT UNDER THE  
CIVIL RIGHTS ACT, (PR)  
42 U.S.C §§ 1983**

*All questions on this complaint form must be answered in order for your action to proceed. If*

#### **9 | I Exhaustion of Administrative Remedies**

[Note: You must exhaust your administrative remedies before your claim can go forward. The court will dismiss any unexhausted claims.]

**A. Place of present confinement**

B. Is there a grievance procedure in this institution?

4 YES (X) NO ( )

**u present the facts in your**

C. Did you present the facts in your complaint for review through the grievance procedure?

procedure?

TEST NO. 1

D. If your answer is YES, list the appeal number and the date and result of the appeal at  
IAB CASE NO. 0610668 LOCAL LOG NO.: SVSP 07-00214  
AND APPEAL(S) FOUND AT GOVT. CLAIMS PROGRAM VCGCB  
400 R STREET 5th floor, SACRAMENTO CALIFORNIA 95814

COMPLAINT - 3410 Y. SACRAMENTO, CALIFORNIA 95814.  
CLAIM NO. GS66872. (SEE EXHIBIT A, RE:  
CIV. CODE SECTION 955.4 SERVICE OF SUMMONS AND  
COMPLAINT.)

FILED

07 AUG 20 AM 11:23

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

E-Filing

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

10 VICTOR DANIEL SOLTHERS }  
11 Plaintiff, }  
12 VS. }  
13 JOE MC GRATH; M.S. EVENS; G. PONDERS; J. }  
14 BULLAT; AND SOME OR ANY PERSON(S) NAMED }  
15 THEREIN SUPPORTING DOCUMENTS (SEE }  
16 VCGCB CORRESPONDANCE IN EXHIBIT A OF }  
17 COMPLAINT UNDER THE CIVIL RIGHTS ACT 42 USC }  
18 1983) WHICH FURTHER APPINTED COUNSEL }  
19 PER 42 USC. 1983 AND/OR }  
20 Defendant }  
42 USC 1997 MAY DEEM APPROPRIATE.

CASE NO. 4256

PRISONER'S  
APPLICATION TO PROCEED  
IN FORMA PAUPERIS

PJH  
(PR)

I, VICTOR DANIEL SOLTHERS declare, under penalty of perjury that I am the plaintiff in the above entitled case and that the information I offer throughout this application is true and correct. I offer this application in support of my request to proceed without being required to prepay the full amount of fees, costs or give security. I state that because of my poverty I am unable to pay the costs of this action or give security, and that I believe that I am entitled to relief.

In support of this application, I provide the following information:

1. Are you presently employed? Yes  No

If your answer is "yes," state both your gross and net salary or wages per month, and give the name and address of your employer:

25 Gross: \_\_\_\_\_ Net: \_\_\_\_\_

26 Employer: \_\_\_\_\_

28 If the answer is "no," state the date of last employment and the amount of the gross and net salary

EXHIBIT

Amend. 'A'

## CALIFORNIA DEPARTMENT OF CORRECTIONS

NAME: SOLTERO

CDC #: K36340

BED: D-9-166L

## COMMITTEE ACTION SUMMARY

REFER TO THE CSR FOR A 45 DAY ASU EXTENSION TO COMPLETE THE INVESTIGATION RELATIVE TO ENEMY CONCERNS. RETAIN IN ASU PENDING CSR REVIEW AND COMPLETION OF THE INVESTIGATION. ESTABLISH MAX CUSTODY AND WG/PG OF D2D EFFECTIVE 10/16/2006, DUE TO THE SUBJECT BEING ON C STATUS PRIOR TO PLACEMENT IN ASU. CLEAR FOR SINGLE CELL AND WALK ALONE YARD. PSYCH IS CLEAR.

## COMMITTEE'S COMMENTS

Inmate SOLTERO appeared before Salinas Valley State Prison's (SVSP's) Administrative Segregation Unit (ASU) Institutional Classification Committee (ICC) today for his Initial ASU Review. SOLTERO stated that his health was good and was willing to proceed. SOLTERO received his 72-hour notice for the purpose of this review. Prior to committee reviewing and discussing this case, SOLTERO was introduced to the committee members.

According to SOLTERO'S CDC 114D, he was placed into SVSP's ASU on 10/16/2006 for: Protect the integrity of a preliminary investigation into threats the subject may have received on his life which would endanger the safety and security of the institution.. ICC notes SUBJECT'S ASU placement was ordered by Lieutenant J. Celaya. The placement was ordered due to protect the integrity of an ongoing investigation. The CDC 114D was issued to SUBJECT within 48 hours of ASU placement. Confidential information was not used for this ASU placement. The Administrative review was held by Captain G. Ponder . A staff Assistant was not assigned . SUBJECT did not request witnesses for the Initial ICC Hearing, therefore an Investigative Employee was not necessary. Visiting restrictions while housed in ASU were reviewed with SUBJECT.

The Mental Health Clinician spoke to him regarding his ASU placement noting SUBJECT is not a participant in the MHSDS at any LOC and current mental health status is stable. Continued ASU placement is not likely to result in decomposition of the inmate's mental health condition and SUBJECT is able to understand and participate in the classification hearing. Subject's central file does not reflect in cell violence or predatory behavior. Subject is clear for Single cell occupancy. The CDC forms 812, 812C, 127, 840, and MCSF have all been reviewed and or updated as necessary.

Based upon a review of SOLTERO'S CDC 114D, Central File, case factors, and through discussion with him, committee elects to: Refer to the CSR for a 45 day ASU extension to complete the investigation relative to Enemy Concerns. Retain in ASU pending CSR review and completion of the Investigation. Establish MAX Custody and WG/PG of D2D effective 10/16/2006, due to the Subject being on C status prior to placement in ASU. Clear for Single cell and walk alone yard. Psych is Clear. At the conclusion of this review, SOLTERO was informed of his Appeal Rights with regards to this committee's actions. SOLTERO acknowledged his understanding and disagreement with committee's actions. Soltero included the following statement, "I deny emphatically any legitimacy to the said information, on 114D of 10/16/2006. I have no recollection nor any knowledge of receiving a threat to my life or safety nor have I articulated, gestured, written, or indicated to any person(s) that I received any such threat(s) as stipulated there upon the 114D administrative segregation unit placement notice, dated 10/16/2006, Inmate hereby disqualifies above said ill-conceived notion(s)."

STAFF ASSISTANT Not Assigned: (Issues not complex and non-participant in MHSDS)

## INMATE CASE FACTORS

CUSTODY	PS/LEVEL	WG/PG & EFF. DATE	RELEASE DATE	GPL	RECLASS	AGE	ETHNIC	TERMER	NEXT BPT & DATE
MAX	161/IV	D2D - 10/16/2006	MEPD 2/24/2021	12 (R)	11/2/2006	32	MEX	1st	IPCH 10/2018
RECEIVED	RECEIVED FROM & TYPE OF TX	RECEIVED CDC	COUNTY OF COMMITMENT		SENTENCE			RESTITUTION	
6/22/2004	CAL Non-Adverse	2/6/1997	San Diego		26 Years to Life			\$7700.00	

## COMMITMENT OFFENSE

1st Degree Murder

## PRIOR ARREST HISTORY

## DISCIPLINARY HISTORY

I/O	Willfully Obstructing/Delaying PO, Battery on an Inmate W/SBI, Delaying a Peace Officer in the performance of Duty, Refusing to Submit to Urinalysis, Possession of Dangerous Contraband, Flooding, Att to introduce contraband into Ad Seg, Participation in a Riot
-----	--

## SEX OFFENSES

## ARSON OFFENSES

## ESCAPES

Clear as of 10/2/2006

Clear as of 10/2/2006

Clear as of 10/2/2006

## ENEMIES

## GANG/TIP

## CONFIDENTIAL

Noted on CDC 812 &amp; CDC 812C

No Gang

Noted &amp; Reviewed

## MEDICAL

## DPP

## SUBSTANCE ABUSE

Full Duty

TB - DATE 128C

DENTAL

N/A

Alcohol, Cocaine, Marijuana

## PSYCH

## MDO

## DDP

Clear

Doesn't Meet MDO Criteria

NCF

## HOUSING

## CELL STATUS

## CAMP, MSF, CCF, SAP, CCRC, REST, CENTER, &amp; MCCF ELIGIBILITY

180 Design (A1)

Single Cell

Camp Eligible: No VIO - LIF

CCF Eligible: No VIO - LIF

CCRC Eligible: No VIO - LIF

MSF Eligible: No VIO - LIF

SAP Eligible: No VIO - LIF

Rest. Center Eligible: No VIO - LIF

MCCF Eligible: No -

## FPTTP

## HWD

## JOB ASSIGNMENT

US Citizen

None

Unassigned

## COMMITTEE MEMBERS

## MEMBERS

B.F. Rankin, FC; C. Sanders, PhD

M. Moore III, CDW (A)

## RECORDED

V. Solis, CCII (Sup)

EXIBIT  
Amend. 'B'